

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs November 5, 2008

IN RE: CHRISTOPHER Y.

Appeal from the Juvenile Court for Sullivan County
No. J-32,687 Mark H. Toohey, Judge

No. E2008-00800-COA-R3-PT - FILED JANUARY 20, 2009

In March of 2007, the State of Tennessee Department of Children's Services ("DCS") filed a Petition to Terminate Parental Rights ("Petition") seeking to terminate the parental rights of Kimberly Y. ("Mother") to the minor child Christopher Y. ("the Child").¹ After trial, the Juvenile Court entered a Final Decree of Guardianship terminating Mother's parental rights to the Child and finding and holding, *inter alia*, that clear and convincing evidence existed to terminate Mother's parental rights to the Child pursuant to Tenn. Code Ann. §§ 36-1-113(g)(1) and (g)(2), and that it was in the best interest of the Child for Mother's parental rights to be terminated. Mother appeals to this Court. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court Affirmed;
Case Remanded**

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and CHARLES D. SUSANO, JR., J., joined.

Robbie C. Lewis, Kingsport, Tennessee for the Appellant, Kimberly Y.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; and Joshua Davis Baker, Assistant Attorney General for the Appellee, State of Tennessee Department of Children's Services.

OPINION

¹ Mother identified Franklin A. as the biological father of the Child. While the Petition to Terminate Parental Rights named both Mother and Franklin A. as defendants, DNA testing revealed that Franklin A. is not the biological father of the Child, and the case against Franklin A. was dismissed.

Background

The Child was born in December of 2005. He was taken into State custody when he was seven days old and was subsequently adjudicated dependent and neglected. The Child was placed with the foster family that previously had adopted two of the Child's biological half-siblings and has been in this foster placement the entire time he has been in State custody. On March 12, 2007, DCS filed the Petition seeking to terminate Mother's parental rights to the Child. The case was tried over several days beginning in April of 2007, and ending in February of 2008, when the Juvenile Court announced its ruling.

Donna Bishop, a team leader with DCS, testified at trial. Ms. Bishop testified that the Child's case has been assigned to her team since the Child came into State custody. The case first was assigned to case worker Kacy Mink and then later assigned to case worker Paige Christian, both of whom are on Ms. Bishop's team.

Ms. Bishop testified that the Child was removed from Mother due to issues surrounding her "[a]bility to parent, lack of bonding with the child and refusing to cooperate with services being provided by CPS." Ms. Bishop further testified that DCS has had previous cases with Mother, and those cases also included issues concerning bonding with the children.

Ms. Bishop summarized the Tenn Kids records for the first few months that the Child was in custody stating:

Of course, the first visitation that we had was in January, and it started, started out fairly well, but then there continued to be a pattern of visitation that would be - - Kim would be there. There were some visits that she left early. Other visits she called and cancelled, visits that were ended early, and then other times we just simply did not, did not hear from her at all. There were, there was one particular occasion that Ms. Mink and I - - there was a visit scheduled. [Mother] wasn't there. So Ms. Mink and I went over to find her to bring her to the office to visit because [the Child] had already been brought there, and his foster home was some distance away. Travel time one way for him is about 45 minutes. So we went to get her, and this was approximately, probably at this point 11:00 o'clock in the morning. [Mother] was at home. She stated she was very sleepy. We told her that we were there to, to bring her to the office. She did get ready and come to the office with us but only visited with the child for about five minutes because she said - - her statement was that he was too hyper and that she couldn't deal with this this morning, and so she left out walking. On other occasions Ms. Mink had went to find her, couldn't located [sic] her at all on a missed visit because we had started at that point if she missed a visit, to try to go find her to see why she wasn't visiting, where she was at, offering transportation, which sometimes she took advantage of and sometimes she did not.

And in May, May was the beginning of the attempts to schedule her parenting assessment, and that was with Solutions, and Solutions came to the visits. It wasn't

that she had to go someplace else. This service was being brought to her, and they - part of what Solutions does is an observation of the interaction between a parent and a child and what needs to happen. After many attempts, it initially started on 5-27, but she missed that visit. She visited a few more times, and finally the assessment was completed on 7-13-06, which really should have only taken two visits. So it took us approximately two months to do something that should have really only taken two visits.

Ms. Bishop testified: "Throughout, throughout the entire life of the case, she's been offered weekly visitation. Those visits did not happen weekly, but that was the schedule that we set out from the very beginning at the seven-day meeting." Ms. Bishop testified that there were concerns regarding Mother's ability to bond with the Child and stated: "Lots of times she would want to visit more with the person who was supervising, talk with them or would pass the child back to the case manager. I observed that."

When asked if Mother was cooperative, Ms. Bishop stated:

Cooperative but would sometimes argue about things that she didn't like, different things that were going on. We originally scheduled the visitation around her schedule and let her pick the day and the time, and then at times she insisted that wasn't a good time for her, although in the beginning she insisted that was the only time she could visit.

The initial permanency plan created for the Child ("Perm Plan") is dated January 18, 2006. Ms. Bishop testified that Mother was given a full year to complete the tasks on the Perm Plan. Pursuant to the Perm Plan, Mother was to obtain transportation, was to utilize Tenn Care transportation for medical appointments for herself and the Child, and was to utilize public transportation for other needs until she made other arrangements. Ms. Bishop testified that DCS provided Mother with a copy of the KATS public transportation schedule and that KATS went by where Mother lived and dropped off two blocks from the DCS office. Mother also was to obtain a source of financial support either by maintaining a stable job for six months or by obtaining government assistance. Pursuant to the Perm Plan, Mother was to support the Child financially while the Child was in foster care. Mother also was to have a mental health assessment, follow any and all recommendations of the assessment, and sign a release allowing DCS to communicate with her mental health providers. Ms. Bishop stated: "There were concerns about her mental health issues because of the past. We did ask her to do a mental health assessment and cooperate with her treating physician or her treating psychologist." Under the Perm Plan, Mother also was to have a safe and stable home, complete a parenting assessment, and demonstrate appropriate parenting skills during visitations.

When asked if Mother completed the tasks on the Perm Plan, Ms. Bishop testified:

As far as [Mother] getting herself to her appointments, I know she did use either friends, family or some type of transportation to get herself to and from some of her mental health appointments. As far as her using public transportation, I don't know

about that, but she did seem to get where she needed to go. As far as financial support, she did end up completing everything she needed to do for her Social Security disability. So she does have a form of financial support for herself. As far as child support, I believe that she was determined not to have an obligation because she is on disability. Her mental health needs, she did go to Indian Path Pavilion for a period of time but then did stop. She went to Frontier Health but stopped. Both times she stopped on her own choice, not because she was released....[Mother] has a history of bipolar and posttraumatic stress disorder. That was discussed from the very beginning, and that was why we asked for a mental health assessment, that the professionals needed to look at her situation and determine what needed to be done for her....I believe on the same perm plan, if you will bear with me just a moment if I can find the Needs page. We as part of the team identify with the help of the family what needs are I guess surrounding the issues of the child coming in care, and one of those needs was identified as her past psychological issues and that she needed to improve her parenting skills, and bonding is one of the things. That was talked about from the seven-day meeting on. That was an identified issue at the seven-day meeting, which is our initial meeting with the family, and then a perm plan would be the fifteen-day meeting, which is where this was created at.

Ms. Bishop testified that a second permanency plan was written January 18, 2007 with the sole goal of adoption.

The parenting assessment was completed July 13, 2006. Ms. Bishop testified: "That was the date her last visit occurred with the Solutions worker, and we did not see [Mother] again until October the 16th." When asked why the parenting assessment took so long, Ms. Bishop testified:

The scattered visitation because it's a parenting assessment with observation. The worker has to see the interaction between the parent and the child, and it's so many times. I think it's three times. I'm not exactly sure. They also make a home visit in the home when the child is not there....[T]he original one was done in February. There were - - and then - - I mean it was approved in February, and then you have to give the - - you have a Solutions worker, who's got to - - you have to work with her schedule as well, but in March there were only - - there were only two visits, one at the beginning and one at the end. The authorization ran out because they're only there - - they're only done for a limited time frame, and if the service doesn't get completed in that time frame, then you have to resubmit....And then we resubmitted again in April, and then finally - - like I said, there was visits that were missed, visits that were scheduled, and the parenting assessment started in May, and then it was eventually finished in July.

When asked why the parenting assessment was not completed in April, Ms. Bishop stated: "[Mother] did not come to any visits, and the one in April was where we submitted for transportation for [Mother] as well to assist her in getting to the visits and ensuring that she had transportation." Ms. Bishop testified that the parenting assessment was not completed in May due to:

missed visits. There's one visit on 5-4, and there was a 45-minute visit on 5-11, but then 5-18 and 5-25 were missed visitations. The 5-25 visit was rescheduled to 5-27, and documentation is it's a - - well, excuse me. 5-27 was a missed visitation but was supposed to be follow up with the parenting assessment with Solutions.

With regard to missed visitations, Ms. Bishop testified: "Sometimes there were calls that she didn't feel well. Other times they were just calls that she wasn't coming. There was simply no excuse given."

Ms. Bishop testified that Mother attended Indian Path Clinic "for periods of time and then would quit, and then eventually quit altogether," and never completed any kind of treatment program there. Steven Lawhon, a licensed clinical psychologist, did an evaluation of Mother on February 24, 2006. In the clinical summary portion of his report of this evaluation, Dr. Lawhon states:

The current evaluation provides support for a bipolar disorder and a borderline personality disorder. The claimant seems likely to have unstable and intense relationships. In addition to these problems, she has a history of alcohol and drug abuse. The claimant appears to be somewhat immature and irresponsible. She will likely require mandatory out-patient treatment if she has any hope of getting her children back. Her records indicate a likelihood of non-compliance for treatment. Therefore any treatment in response to the above question should be mandatory. Both psychiatric and substance abuse treatment are recommended along with case management services.

Paige Christian, the DCS case worker for the Child since May of 2006, also testified at trial. Ms. Christian testified that the Child has been diagnosed with asthma and that Mother is aware of this diagnosis.

Ms. Christian testified that since the Child came into State custody, Mother has had ninety-three opportunities to visit with the Child, but has exercised approximately only half of those possible visitations. Ms. Christian testified that before the filing of the Petition: "[Mother] was offered 50 visits. She missed 32 on her account. Five she left early and three were due to weather policy or [the Child] being sick." During the four month period immediately preceding the filing of the Petition, Mother exercised only three out of sixteen possible visitations. Ms. Christian testified: "She had scheduled three visits, but one visit she didn't show. Another visit she only stayed 15 minutes. Then on, let's see, February the 5th she did visit for approximately an hour, hour and a half."

When asked if she attempted to contact Mother to reschedule missed visitations, Ms. Christian testified:

I've sent her letters. I've called all the phone numbers I had for her. Yeah, I sent her several letters throughout the time reminding her when the time to visit and when our

office hours were, and I did it as part of her perm plan to keep up with regular visitation.

When asked if Mother responded to the letters, Ms. Christian stated: "I got a response one time from her. She called and said that she received my letter and that she did not want her rights terminated." Ms. Christian is not aware of anything that would have prevented Mother from making the scheduled visitations and Mother was aware of these visitations.

Ms. Christian observed at least six visitations between Mother and the Child. Ms. Christian described these visitations stating:

Most of the time [the Child] would stay on my lap and hold onto me. He wouldn't even look at [Mother]. When [Mother] would try to take him, he wouldn't go to her. I would sit down in the floor with him, trying to interact with him with toys and get her interested and get his mind off of me and focus on what's going on. Normally, there was at least two times and that I had to leave him on her lap crying and I would sort of go around the corner where he couldn't see me, but I could see what's going on. One visit I gave her [the Child], he started to cry within a matter of less than a minute. She gave him right back to me and said that he was too fussy. During that visit, she continuously let him crawl to me, walk to me. He wanted to come back to me. And she made the statement twice that he just didn't know her.

Mother never brought diapers or toys to the visitations. Ms. Christian testified: "The child's birthday is on 12-22-06, of 12-22 of '06, she missed a visit on 12-18. On 12-11 she only visited for 15 minutes" During the time that Ms. Christian worked on this case, Mother never provided any birthday or Christmas presents for the Child.

Mother visited with the Child on June 15, 2006 and then did not visit again until July 13, 2006. After the July 13 visit, three months passed before Mother again exercised visitation on November 16, 2006, despite the fact that visitations were scheduled every week during this time period.

Around the beginning of January of 2007, Mother rented an apartment next to her mother's, where Mother had been staying. Ms. Christian testified:

Up until January of '07, she had been living in numerous places, numerous motels with different friends. I never could have a good contact address for her. She had a fire at Model City. She had went to live in a motel for a while and then had another fire at Model City; was kicked out again. She lived at the Gardens Inn Apartments, Model City Apartments. I mean, about every motel in - - Days Inn, I know, and then with a couple friends, with her mother. It was just sporadic in where she was living, and the phone number she would give me, lots of times it would not be a working number or disconnected, so I really never had a good contact for her.

Ms. Christian testified that Mother did not stay in contact with her. Ms. Christian testified:

I sent her notices of all staff meetings, perm plan meetings, Foster Care Review Board, and like I said, I sent letters to her talking about visitations and I also sent her extra copies of perm plans and things of that nature to her mother's address when I didn't know where she was.

Ms. Christian also testified that DCS "provided [Mother] with therapeutic visitation with transportation. We would go pick her up for visits. We provided her with KATS' schedule for transportation. We have provided her with all mental health information for her to get back into counseling. I don't know of anything else we could have done."

Ms. Christian testified that the Child came into State custody "[d]ue to [Mother's] history, a failure to bond. When [the Child] was born, she didn't feed or bond with him very well in the hospital. And that was what led him into custody." Ms. Christian testified that Mother has not made any substantial adjustment to her lifestyle nor has she demonstrated that she has acquired the skills for child care and the emotional stability to provide a safe and stable home for the Child. Ms. Christian would not recommend returning the Child to Mother's custody because "[Mother] does not have the parenting ability to care for a two year old."

Ms. Christian testified that during the year of the Perm Plan, Mother completed the parenting assessment and obtained Social Security disability. However, Mother did not obtain transportation, follow the recommendations of the mental health assessment, sign a release so that DCS could communicate with her mental health providers, follow the recommendations of the parenting assessment, furnish the Child with appropriate developmental activities during visitations, demonstrate appropriate parenting skills during visitations, or maintain contact with DCS.

The Child has been in the same foster home the entire time he has been in State custody. There are four other children in the foster home, two of whom are the Child's biological half-sisters. Ms. Christian believes that it would be detrimental to the Child to be removed from the foster home because "[t]hat's the only home he knows."

When asked what DCS had done to assist Mother with transportation, Ms. Christian testified:

We have offered to go and pick her up for visits. We bring [the Child] to her, to her home for visitations so that she doesn't have to go anywhere. I know on two occasions or one occasion, Toma would have to testify, that she picked her up on the side of the road to bring her in. Donna Bishop in the record states that she went to her home twice to get her for visitation. Kacy Mink has picked her up for visitations. We've provided her with a KATS' transportation schedule, which she stated that she wouldn't ride KATS' transportation because she didn't ride with strangers.

Ms. Christian testified that during visitations "[the Child] sits very still on the couch. He's not very active, so he's not really interested in playing with anything that I've noticed." Ms. Christian testified that, in contrast, in the foster home:

He's a completely different child. I don't know how to - - he is everywhere he is, playing with everything. He's - - they have a gym in their den. He's up over the gym. He's climbing. He's come up to me. He's laughing. He's playing. He's playing with the other two. There's two other small children about his age in the home. He's interacting with them. He's playing with them. He's showing me all these toys in the home. I mean, it's like night and day.

Theresa Fletcher, a licensed Marriage and Family Therapist, conducted a bonding assessment on the Child for DCS. As part of the bonding assessment, Ms. Fletcher visited the Child in the foster home. She described one visit stating:

If you could describe a family as organized chaos with those young children in the home and so much activity, the couple worked really well as a team to meet the kids' needs. When I went to the home, Mr. Corso was helping with homework, with [the Child's] older siblings. And then [another child], the four year old was riding a toy around in the room and then the two younger boys were playing pretty robustly and there's a great deal of interaction. I think the strength that they have is that they're able to be very sensitive to each child's needs and so the children are redirected. There's discipline. There's nurturing. They made good eye contact with the children. [The Child] moved freely between the parents. Mr. Corso was also, after homework was done, played a game with the younger children that helped with counting, colors, identifying colors and it was a very relaxed, friendly, warm, disciplined atmosphere. And cats - - there was a cat there.

Ms. Fletcher testified:

[The Child] appears to have a very warm, loving, attached relationship with Mr. and Mrs. Corso as well as the siblings that are there in the home. And he appears to be thriving in that and with that environment. I think that needs to be protected. His relationship and placement there should be protected.

Ms. Fletcher testified that disrupting the Child's current placement could have negative effects and explained:

Breaking attachment bonds at such a tender age because the attachment bonds are very - - get very formed within the five to eighteen months. And so to disrupt that causes what we call unhealthy attachment or disordered attachment. And we see it - - I see it with the teens that I work with in foster care where they have been very attached to biological parents or someone at an early age and then they lose that person, and it disrupts their ability to develop relationships throughout their life cycle. So the significance of attachment and bonding is the basic formation for human relationships, self worth, self esteem. With little kids sometimes when the bonds are disrupted, they have night terrors. They have behavior problems, temper tantrums, all manner of behavior and psychological disturbances.

Ms. Fletcher also met briefly with Mother and described this meeting stating:

I came to her home as I do the other placements. I called [Mother] and we made arrangements for me to come to her home at a particular time. And when I arrived, she was unprepared for my contact with her. And I had made arrangements to see her several hours prior to the time that she was going to get to visit with [the Child] so I could talk with her and then be able to observe her with her son. And she filled out the health history form that I asked her to do and signed releases and then seemed very unprepared and she asked me to leave. And so she asked me to come back at a later time, and she allowed me to return just right before the time that [the Child] was to arrive. So I did not get to do the clinical interview with her that I typically do. ...Again, it limits the information that I have because I do like to get the self report from the parent, and again, I'd asked [Mother] that it was very important that I hear how she feels about her son, and I wanted to here [sic] from her about her relationship with him. And she told me she did not like me asking questions like that and asked me to leave, so I feel like it's limited, because I did not get to hear from her, you know, her story basically about her son, [the Child].

Ms. Fletcher testified about her observation of the visitation stating:

I observed [the Child] with [Mother] and [Mother] seemed to be very - - to struggle with knowing how to interact with her child. I did - - I was there before - - I was able to get there just before the DCS person brought [the Child]. So I followed her out to the car to watch to see if the child reaches for her and he did not. He did put his arms around her when she got him out of the car. He sat on her lap and there was no interaction at all for about 50 minutes. And this is a very active child. So he seemed very confused. [Mother] seemed unsure about how to help engage him. During the contact, [Mother] had invited her mother and her nieces over, and even with a small child, you know, sometimes kids will get down and play with other kids. And it took [the Child] quite a while to be able to relax. I noted that he - - [Mother] tried to make physical contact with him and he pushed her hand away. She had a toy that was - - he played with some, and he just - - he was - - he didn't interact and she didn't talk to him. About 50 minutes after that, he did get down and start coloring and playing with some other toys that she had and [Mother] then later fixed him a snack and with that snack the child sat at the table. He went right to the table to eat. Again, I'd seen him do that in the other home so I [sic] let me know that there had been some good boundaries set around meal times and snacks and stuff like that. And so he went to the table and [Mother] prepared an appropriate snack for him. She did prepare a snack for himself [sic] and he asked her for some and she had celery and carrots for herself and then had chicken nuggets and corn dogs for [the Child]. And I think she was concerned about choking, so she told him no and redirected him to some Ranch dressing that he could have. During the contact she had gotten from her mother some juice for him and in a sippy cup, and he refused that. And then she offered him tea that was in a Dr. Pepper thing that she had been drinking out of, and there was some concern because [Mother] had reported that she was sick the night before. The DCS

worker asked her about the wisdom of doing that and then she repeated that later in the time that I was there, as well. She just seemed to really struggle, you know, with interacting with her child.

Ms. Fletcher testified:

It appeared to me that [the Child] did not have an attachment to his biological mother, [Mother]. She really struggled with even how to engage him. It appeared that she made efforts to meet some of his physical needs by providing a snack and those kinds of things. Just really had a hard time understanding developmentally what he might need or what might be helpful to even be able to interact. I did think that [Mother] could really benefit from some intensive therapeutic assistance with her parenting. But as far as her relationship with her son, it appeared to be minimal.

Toma Moore, a Community Service Assistant for DCS, supervised visitations and provided transportation in this case. Ms. Moore testified that before the Petition was filed, Mother missed over half of the offered visitations. Ms. Moore testified: "When [Mother] did call or when I did get a response from her, she was sick. A lot of times she said she had migraines. Sometimes she had stomach viruses. It just depended on the day." Ms. Moore stated: "There was one time that I did show up and she was there and didn't get him out of the car because she said she was sick and didn't want to get him sick. So that was about five minutes and she left." When asked how long the visitations were, Ms. Moore testified:

They started an hour and increased to an hour and a half. The reason I increased them to an hour and a half because she was because she was, you know, appointed 4.3 hours a month and she was missing so much, that I wanted to give her an opportunity to make sure that she got at least that in, but that didn't happen. So after TPR, the last TPR date I believe that we were in Court, was - - it was filed on the 12th of March and I think we had Court on the 17th of August. The week before that we started home visitation, and mainly it was to make sure that we were doing everything that we could to offer visitation, but also because she wasn't showing up at the office. She always said she either had transportation problems or was sick. I started doing home visits and from then on we did an hour and a half until I believe it was the end of October that I started giving her two hours just to make sure that she got all her time in.

Before the filing of the Petition, Mother normally did not stay for the entire time scheduled for visitation, and Ms. Moore testified:

Even after, there were times when she ended visits early because she was sick or I got there one time and didn't know that she was at the hospital or at the doctor. So that one, of course, didn't happen. I didn't get a call on that one. She has been better since TPR as far as me coming and staying, because really it's me coming to her. But there have been times that she's ended it either due to a migraine or a sick stomach.

Mother did not provide child care supplies like diapers and wipes for the visits. When asked if Mother ever gave a reason why she did not provide things for the Child during visitations, Ms. Moore testified:

As far as diapers? She said she - - every time that it's come to a situation where she's needed a diaper, she's called her mother and asked her to bring one over. And then she'll say, "Well, I don't get paid until Friday or I don't get paid until such and such a date." And - - but that's been going on for as long as they've not been sending the diaper bag. You know, that was two or three months of that, so I think it's not a money issue. The last time we discussed it - - not the last time we discussed it, because the very last visit she had, she said she had a couple of diapers. And I asked her, "Oh, so you bought diapers?" And she said, "No, that she doesn't get paid again until a certain date," and obviously, she had gotten them from her mother. The visit before that is when she said that she was behind on her rent and just didn't have the money to do it right now. And that she would - - she was going to save up some money to buy diapers.

The Child has asthma and Ms. Moore testified that she "did have to bring his breathing treatments from when he was at day care, Country Kids Day Care. I would have to transport his breathing machine to do that if he needed it during the visit." Ms. Moore testified that she tried to schedule things so the Child could have a treatment before he left for visitation and another after he returned from visitation. Mother knew that the Child has asthma, but Mother never had to administer a breathing treatment during visitation. Ms. Moore testified:

There were times when I would arrive and [Mother] would either tell her mom to get him out of the car because she was smoking or she would tell me, "I'll get him in a minute. I got to finish my cigarette." So there was one time that [grandmother] got him out while she had a cigarette in her mouth and so they had their little reasonings for why they did what they did.

When asked if Mother took a proactive role in taking care of the Child during visitations, Ms. Moore testified:

No. When the visits first started - - when I first started supervising the visits, let's put it that way, she - - the first visit that we did, she seemed very sullen. I don't know if she was upset over the fact that, you know, this was all happening. I don't know what her reasoning was, but she - - you know, if - - you know, I can go back and look at my notes that, you know, she kind of let her mom do the visitation. Mom fixed his bottle. Grandmother fixed his bottle. She was very sullen and quiet. She didn't say very much to him. She just mainly looked at him. Grandmom changed him that day. She has gotten better since TPR was filed as far as trying to provide a snack or trying to just mainly being present. But it's not the type of - - she doesn't get down in the floor and play. She doesn't do normal activity during those visits. She didn't do normal activity during those visits.

Ms. Moore also testified:

If the grandmother was there, especially the first few visits, if grandmother was there, grandmother would hold him. She was the one that went and washed his bottle out when they were going to feed him. They kind of went back and forth over who was - - the first visit that grandmother came to, they had a little debate over who was going to go smoke first. And so it was back and forth on who took care of him, who watched him while the other one took a break, and there were times when [Mother] had a cell phone at that point, and she took a call. So she took that moment to go out to take her smoke break while [grandmother] stayed with [the Child]....

Ms. Moore testified that after the Petition was filed, Mother “sent a letter of questions for the foster family to find out what his likes and dislikes were, what, you know, his favorite foods and things that he liked to have here at - - ... but that was the first time she had ever done anything like that.”

When asked how the Child acted during visitations, Ms. Moore testified:

He acted stunned or confused. I would - - I don't [know] how else to characterize it. The last visit, let's put that for instance. He sat on his mom's lap and just stared while his cousins played and he just - - he's not the same child as when he's at his foster home when he's running around and chasing and doing - - you know, playing. It takes him a while to warm up to - - he just is very quiet during the visits and very unattached. I don't know what other word to use. He just is not lively. He's not just a normal two year old running around trying to play with his cousins or trying to engage with people.

Ms. Moore further stated:

I noticed that during visits if he's really quiet and maybe the end of the visit he might start prowling through things, and he'll play with the TV remote sometimes near the end of the visit. But when he gets in the car and if I turn on some music for him or if I talk to him, he starts pointing stuff out for me and talking and babbling and, you know, if there's something on that has, you know, clapping or whatever, he'll clap. He'll say stuff to me. Sometimes he falls asleep. But he's just - - it's just not - - it's not the same behavior.

When asked if she ever provided transportation for Mother to get to the visitation, Ms. Moore testified:

She was not showing up so frequently that it was becoming hard to go all the way to get him and come all the way to Kingsport and wait for her not to be there. So I required her to call the day of the visit to let me know whether she was coming and sometimes that still even if she called, she didn't show up. “Well, I was waiting in Gray,” which was the halfway point between where the child is and where the DCS office at that time was. And called to see if she was there yet, and she wasn't. So I

waited a few more minutes and then I got a call, excuse me, saying that she was going to come, but that she had to walk and it was going to be about 40 minutes for her to get there. So I decided, well, I'll just go and head to her apartments and try to track her down. Maybe I can catch her between there and the DCS office and she was still in the parking lot when I got there. And she was angry that I came to pick her up and wanted to know if Donna Bishop had sent me to get her and I said, "No, I just thought I'd help you out, keep you from walking, and us missing the whole, you know, the whole 40 minutes you said it was going to take to get there." And she said, "She'd been in the hospital or the emergency room the night before and that she had been sick, and that was - - her transportation didn't show up," and so there were times when I did, you know, try to help her out and go get her and things like that.

Ms. Moore testified that in June of 2006:

She missed [a visitation] because she forgot the visit. The next one she missed was due to transportation. I had it right here. Just one second. That was right before she went weeks and weeks and weeks with not hearing from her. Oh, the 13th of June of '07, she missed because she said she'd overslept.

When asked what time of day the visitations were scheduled for, Ms. Moore testified:

Afternoon, because she said she had insomnia and that she could not sleep at night. They started - - she requested Thursdays when we first started out because that was when her mother had an off day. And at that time that was the time that I had open in my schedule. And it's kind of hard to move things around to afternoon visits if you're working with other parents and their work schedule, so I gave her after ten o'clock on Thursdays. And then she requested to have that switched. But then she requested to have them later in the day because of her insomnia, but we never could get a letter from her doctor. We never could get anything from her stating that that was, you know, a real issue. But then later when she came back - - after I had had to stop, I had to give up that time, and then later on I resumed visits again when Paige let me know, you know, that she was back. We started in the afternoon and it just depended on which days you want to talk about. We went from 1:00 to 2:30 and then these last since TPR happened since it was filed and we had the Court date, I've been going anywhere from 12:00 to 2:00 to 2:00 to 4:00 to whatever we could work around since she started her job.

When asked if there were any specific things about the visitations that stuck out in her mind, Ms. Moore testified:

[A]fter [Mother] sent the letter to the foster mom asking, you know, likes and dislikes, you know, things that he should or shouldn't have, she was made aware that [the Child] had developed an allergy to berries, anything with berries in it. And there were at least two times after that that I had to stop her from feeding him things with berries in it or giving him drinks with berries in it. There have been, especially in the

last two visits, she's let me know that she was going to [take] a nap until I got there. She called to let me know that the lady for the bonding assessment was there and that she was going to send her away because she'd been up all night sick and with a migraine and that she was going to sleep until I got there. She told me during one of those visits that she couldn't wait to get a job so she wouldn't be bored. That she's bored after he leaves and that she's going to take a nap after she spoke with me that morning because she didn't get to go check for jobs with Frontier Health that day, and as soon as she laid down at 9:00 a.m., people started calling and it took her nap time, so

Vincent Corso, the foster father, testified at trial. Mr. Corso and his wife have had custody of the Child since the Child first came into State custody. Mr. Corso testified that the Child is a member of the family in the foster home. Mr. Corso and his wife have adopted four children, including two of the Child's half-siblings, and they want to adopt the Child.

Mother also testified at trial stating:

Whenever I lost him, he was only seven days old and it just - - I mean, I was starting to get my life back together when I lost him. I just had a fire. I was looking for a job and I was so positive and happy. And then whenever he was just ripped out of my arms, it like set me back to a stage that I couldn't handle. And due to that, I kind of allowed myself to be lazy and I wouldn't push myself as far as I should have. You know, I just kind of give up in a sense. And when I found out that they was going to terminate my rights, something just snapped in me and said, "Hey, wait," you know. "You're about to lose him because you're not doing anything. You have a chance here. Why are you doing this?"

Mother testified that she was diagnosed by Dr. Lawhon with post traumatic stress disorder. Mother testified:

The post traumatic stress disorder was pretty much in remission during that time, so I wasn't really having effects, too much at all with it. But when it first started that was back whenever I signed - - I terminated my rights on my first two children. And it was because I found Kristy's father dead. And that's when it started. And I went into a shock stage where I couldn't function at all. But then after the years went, I got better. I was on medication for it. But it was pretty much completely passed and in remission whenever I had my son.

Mother testified that she was taking Lunesta, which she described as "a mild sleeping pill," Maxalt for migraines, and an allergy medication. She also testified that she smokes "[p]robably, about a half a pack now," but that "[a] year ago I was up to about two, two and a half." Mother testified: "I can't buy cigarettes. My mother gives them to me."

With regard to the parenting assessment, Mother testified:

That this lady came out and she had asked me some questions and she said that we would continue it another day, and I was supposed to write down all my feelings about parenting, you know, and how I think children should be raised and what levels do you teach them these things? And she said she would come back for me to do that, and I never had an opportunity to do that.

When asked about the parenting classes, Mother testified:

I did call DCS and asked if they could help me in any way pay for the parenting classes or recommend a place I can go to where I might be able to get the help, assistance for it. And they denied me the assistance, so I did it on my own.

Mother admitted that DCS denied her help at this time because Mother did not ask DCS for help until after the Petition was filed.

Mother testified “if I had him in my home, I would do anything - - anything anyone asked me Court wise.” When asked if she thought that therapeutic visitation would help her, Mother testified: “I think I know perfectly well how to bond with him, but a little help from outside don’t hurt.” Mother testified that she would have liked more help from DCS and stated:

Well, in the beginning, I’d liked them to have told me everything they required instead of just putting on the paper of ten visits. I mean, they wasn’t direct with anything. I mean, they put one sentence down and I wouldn’t even know where to start to get it done. Then I’d call and ask for help. I felt like they really wasn’t helping me in any way whatsoever.

Mother stated that with regard to mental health counseling:

I went there on my own....And I stayed in counseling on my own. I’m being told that I don’t need counseling, but I stay there anyways because I told them I want to please DCS right now and show them that whatever they think I need, I’m going to do even if I don’t feel like I need it. So I stay there anyways.

Mother produced photos taken of her and the Child during visitation. When first asked, she insisted that the date stamp on the photos showing that they were all taken on January 18, 2007 was wrong and that the photos were taken during several different visitations. However, Mother later admitted that the photos, which all show her wearing the same outfit and the Child wearing the same outfit, were all taken on January 18, 2007.

Mother admitted that she had a copy of the Perm Plan and that she had read it. She testified: “I know that my rights can be terminated today no matter what I say. Because I did fail for four months to visit.” Mother admitted that she is aware that she missed almost three-quarters of her scheduled visitations. When asked why she missed so much visitation, Mother stated:

There was two reasons. One, because I had three surgeries in that four months. The other one was because I didn't want - - I wanted to act like there wasn't a problem there. If I ignored what was going on and didn't acknowledge DCS then maybe it would just go away. It would never exist....It wasn't about ignoring him. I know what you're trying to do and it's not going to work. It's not about ignoring him. I love my son no matter what happens. I messed up. I missed four months. It was never about ignoring him.

Mother admitted that she surrendered her rights to two other children. When asked why she surrendered her rights to those children, Mother testified:

Because the best way I can explain it is earlier when you all were discussing [the Child] how it might effect him to be removed where he's so attached to this family now. I understand that and I respect that for him to be removed from it dramatically what it can do to him. Well, when Bren and my oldest daughter, Alexis was removed from me, before she got removed, she was talking perfect. I mean, she spoke plain word, sentences even. She was in pull-up diapers and using a potty. And the only time she used the pull-ups is when she was asleep. And when she got removed from me, it put her through that state of shock, where they put her back in diapers. She stopped talking. She started pointing. And I got tired of listening to her. Every time the visit would end, she would grab hold of my leg, clinging to me, screaming for me not to let her go and I couldn't deal with her going through that anymore. I wanted her to be happy and not pulled back and forth.

Mother admitted that she has been to jail for theft, but that was before the Child was born.

In rebuttal to Mother's testimony, Paige Christian, the DCS case worker, testified:

To the fact that she didn't know what to do, we hold child and family team meetings periodically. 1-9-06 she was present. 1-18-06 she was present. 2-18-06 she was at a 30 day Court hearing. 4-12-06 she was at a 30 day court hearing. 6-23-06 she was at a child and family team meeting. 9-21-06 she did not show for that meeting. She did not show for her foster care review board on 9-6-06. I did receive a telephone call from her on 10-12-06 stating that she had received the paperwork I had sent to her where a TPR would be considered. She was upset about that. That phone call came at 3:59 a.m. She called me back three days later and requested a visit. She then cancelled at 5:59 a.m. saying she was sick. She was at a permanency hearing on 11-15-06. We had a meeting on 11-16-06 in my office with me, her and her attorney explaining again what her requirements were for her. I mailed her approximately three letters on three different occasions explaining to her when her visitations were, what my office hours are, my direct line to me and my supervisor. I even would let her know when I was on vacation, the dates. To the fact of the parenting classes, she called and requested funding after the TPR was filed. I explained, due to that we would not pay for parenting classes at that time. She - - we

did do funding for Solutions, a contract provider to do the parenting assessment and provide the visitations. She did complete the parenting assessment with Solutions on 7-13-06 in our DCS office on Clay Street with Patty Cline. Due to the recommendations not being followed, we did not see her again until November.

Ms. Christian testified that she believes that DCS has offered Mother all that they could provide for her.

The Juvenile Court entered a Final Decree of Guardianship on March 12, 2008 finding and holding, *inter alia*:

5. The Court finds that the Respondent [Mother] has abandoned the child by failing to visit or otherwise maintain contact with the child within the four (4) month period preceding the filing of the petition to terminate her parental rights pursuant to T.C.A. §36-1-113(g)(1) and §36-1-102(1)(A)(I), -102(1)(c) and 102(1)(E). The proof showed that the Respondent had not visited or had any contact with the child in the requisite time frame and therefore the Court finds that the State has shown clear and convincing proof that supports the termination of the Respondent [Mother's] parental rights.

6. The Court also finds that the Respondent [Mother] has failed to provide a suitable home for the child for a period of not less than four (4) months following removal. The Court having determined that the Department of Children's Services provided reasonable efforts to assist Respondent to establish a suitable home and Respondent has failed to use reasonable efforts to establish a suitable home for a period of almost one year. The Court finds by clear and convincing evidence that the grounds for the termination of the Respondent [Mother's] parental rights due to failure to provide a suitable home exist.

7. The Court finds by clear and convincing evidence that the Respondent [Mother], has failed to substantially comply with the Permanency Plan. The Court takes note that the Respondent has completed a number of tasks on the Plan after the filing of the Petition to Terminate Parental Rights; however, before filing of the petition she has failed to comply.

8. The Court finds that it is in the child's best interest for the parental rights of Respondent, [Mother] to be terminated in that:

a. The Respondent has made an adjustment of circumstance and the conditions in her home have changed but not to the extent that the child would be safe and well cared for in her home. The Court also finds that there is no bond between Mother and child.

b. The Court finds that the Respondent has made an adjustment over time with respect to where she lives and her mental health. The Respondent has failed to make an effective and lasting adjustment after reasonable efforts by the Department of Children's Services.

c. The Respondent has failed to maintain regular visitation or any other contact with the child prior to filing the Petition. Since filing of the Petition to Terminate her parental rights Respondent has visited regularly.

- d. The Court finds by clear and convincing evidence that there is no meaningful relationship between mother and child.
- e. The Court finds that there would be a detrimental effect on the child's emotional, and psychological wellbeing [sic] to change the environment and caretakers at this point. The child has been in the custody of the Respondent for a total of seven (7) days since birth. He has developed a stable emotional, psychological, and medical environment with the foster parents who have adopted two of his siblings. The child is well bonded to the foster parents and to his siblings and considers that to be his family, and this is where he has lived for over two years.
- f. The Court finds that the Respondent is not really willing and able to provide for the child in a physical manner to meet his needs.
- g. When the Respondent's psychological assessment was completed in February 2006 the Respondent's mental and emotional status was detrimental to the child and prevented her from providing a safe and stable environment and care and supervision for the child. Currently the Court finds it to be unknown with the limited proof on Respondent's mental status as to whether or not Respondent's mental and emotional status continues to be detrimental.
- h. The Respondent did not pay support for the child and was not required to do so.
That reasonable efforts to reunify the child with the family and to achieve permanency for the child were made by the Department of Children's Services, and it is, therefore, in the best interest of the said child and the public that all of the parental rights of the Respondent [Mother] to the said child be forever terminated.

* * *

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

That pursuant to T.C.A. §36-1-102 the Respondent has willfully abandoned the child ... for more than four (4) consecutive months immediately preceding the filing of the Petition in this cause, and that under the provisions of T.C.A. §36-1-113(g)(1) and T.C.A. §36-1-113(g)(2), the parental rights of the Respondent [Mother], to the child ... are hereby terminated. The Court after careful consideration of the best interests factors listed in the statute finds by clear and convincing evidence that it is in the child's best interests for the Respondent's parental rights to be terminated.

Mother appeals the termination of her parental rights to this Court.

Discussion

Although not stated exactly as such, Mother raises five issues on appeal: 1) whether the Juvenile Court erred in holding that DCS had used reasonable efforts even though Theresa Fletcher made further recommendations of therapeutic visitation; 2) whether the Juvenile Court erred in terminating Mother's parental rights under Tenn. Code Ann. § 36-1-113(g)(1); 3) whether the Juvenile Court erred in terminating Mother's parental rights under Tenn. Code Ann. § 36-1-

113(g)(2); 4) whether the Juvenile Court erred in finding and holding that it was in the Child's best interest for Mother's parental rights to be terminated; and, 5) whether the Juvenile Court erred in admitting the CASA report into evidence.

Our Supreme Court reiterated the standard of review for cases involving termination of parental rights stating:

This Court must review findings of fact made by the trial court *de novo* upon the record "accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise." Tenn. R. App. P. 13(d). To terminate parental rights, a trial court must determine by clear and convincing evidence not only the existence of at least one of the statutory grounds for termination but also that termination is in the child's best interest. *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002) (citing Tenn. Code Ann. § 36-1-113(c)). Upon reviewing a termination of parental rights, this Court's duty, then, is to determine whether the trial court's findings, made under a clear and convincing standard, are supported by a preponderance of the evidence.

In re F.R.R., III, 193 S.W.3d 528, 530 (Tenn. 2006).

In *Department of Children's Services v. D.G.S.L.*, this Court discussed the relevant burden of proof in cases involving termination of parental rights stating:

It is well established that "parents have a fundamental right to the care, custody, and control of their children." *In re Drinnon*, 776 S.W.2d 96, 97 (Tenn. Ct. App. 1988) (citing *Stanley v. Illinois*, 405 U.S. 645, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972)). "However, this right is not absolute and parental rights may be terminated if there is clear and convincing evidence justifying such termination under the applicable statute." *Id.* (citing *Santosky v. Kramer*, 455 U.S. 745, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982)).

Termination of parental or guardianship rights must be based upon a finding by the court that: (1) the grounds for termination of parental or guardianship rights have been established by clear and convincing evidence; and (2) termination of the parent's or guardian's rights is in the best interests of the child. Tenn. Code Ann. § 36-1-113(c). Before a parent's rights can be terminated, it must be shown that the parent is unfit or substantial harm to the child will result if parental rights are not terminated. *In re Swanson*, 2 S.W.3d 180, 188 (Tenn. 1999); *In re M.W.A., Jr.*, 980 S.W.2d 620, 622 (Tenn. Ct. App. 1998). Similarly, before the court may inquire as to whether termination of parental rights is in the best interests of the child, the court must first

determine that the grounds for termination have been established by clear and convincing evidence. Tenn. Code Ann. § 36-1-113(c).

Dep't of Children's Servs. v. D.G.S.L., No. E2001-00742-COA-R3-JV, 2001 Tenn. App. LEXIS 941, at **16-17 (Tenn. Ct. App. Dec. 28, 2001), *no appl. perm. appeal filed*. Clear and convincing evidence supporting any single ground will justify a termination order. *E.g., In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002).

We begin by addressing whether the Juvenile Court erred in holding that DCS had used reasonable efforts even though Theresa Fletcher made further recommendations of therapeutic visitation. As this Court stated in *State of Tennessee, Department of Children's Services v. S.M.D.*:

The State “must make reasonable efforts to preserve a family before seeking to terminate parental rights.” *In re: Jeremy D. and Nathan D.*, No. 01-A-01-9510-JV-00479, 1996 Tenn. App. LEXIS 292, at **7-8, 1996 WL 257495, at *3 (Tenn. Ct. App. May 17, 1996), *no appl. perm. appeal filed*. However, “[r]eunification of a family is a two-way street, and the law does not require DCS to carry the entire burden of this goal.” *In re: R.C.V. and O.V.*, No. W2001-02102-COA-R3-JV, 2002 Tenn. App. LEXIS 811, at *39, 2002 WL 31730899, at *11 (Tenn. Ct. App. Nov. 18, 2002), *no. appl. perm. appeal filed*.

State of Tennessee, Department of Children's Services v. S.M.D., 200 S.W.3d 184, 197-98 (Tenn. Ct. App. 2006).

The record on appeal shows that Ms. Fletcher testified that she thought that Mother “could really benefit from some intensive therapeutic assistance with her parenting.” Ms. Fletcher, however, also testified that “as far as her relationship with her son, it appeared to be minimal.” The record clearly shows that Mother failed to exercise a majority of the visitations offered to her and that even when she did exercise visitation, she often arrived late or ended the visit early. Therapeutic visitation could not offer any benefit whatsoever if Mother continued to fail to exercise her scheduled visitations.

The record shows that DCS made the effort to schedule visitations at a time chosen by Mother and that the case workers adjusted the times of visits, provided transportation for Mother at times, and even moved the visitations to Mother's home in an effort to assist Mother. Despite these efforts by DCS, Mother still only sporadically exercised her visitation. The record also shows that DCS made the effort to assist Mother to find public transportation that she could utilize and to obtain a mental health assessment and treatment. Mother, however, refused to utilize public transportation and failed to complete any type of mental health treatment program. Mother made little or no effort toward completing the tasks on the Perm Plan until after the Petition was filed. Reunification is a two-way street, and Mother failed to carry her portion of the burden despite DCS's reasonable efforts. We find no error in the Juvenile Court's finding that DCS made reasonable efforts to reunite this family.

We next address whether the Juvenile Court erred in terminating Mother's parental rights under Tenn. Code Ann. § 36-1-113(g)(1). In her brief on appeal, Mother argues that her failure to visit could not be willful because the Juvenile Court found that Mother "suffered from significant mental health symptoms, being an explanation as to the lack of visitation." In support of this proposition, Mother cites to the transcript of the Juvenile Court's oral ruling from the bench. However, as our Supreme Court has stated: "the court speaks through its order not through the transcript." *In re Adoption of E.N.R.*, 42 S.W.3d 26, 31 (Tenn. 2001). As this Court noted in *Cunningham v. Cunningham*:

The law of Tennessee is well-settled on this issue:

"A judgment must be reduced to writing in order to be valid. It is inchoate, and has no force whatever, until it has been reduced to writing and entered on the minutes of the court, and is completely within the power of the judge or Chancellor. A judge may modify, reverse, or make any other change in his judgment that he may deem proper, until it is entered on the minutes, and he may then change, modify, vacate or amend it during that term, unless the term continues longer than thirty days after the entry of the judgment, and then until the end of thirty days."

Broadway Motor Co., Inc. v. Fire Insurance Co., 12 Tenn. App. 278, 280 (1930).

This rule survived the adoption of the Tennessee Rules of Civil Procedure. *Sparkle Laundry and Cleaners, Inc. v. Kelton*, 595 S.W.2d 88, 93 (Tenn. App. 1979); *Evans v. Perkey*, 647 S.W.2d 636, 641 (Tenn. App. 1982).

As observed by the Court of Appeals for the Western Section: "We do not review the court's oral statements, unless incorporated in a decree, but review the court's order and judgments for that is how a Court speaks." *Shelby v. Shelby*, 696 S.W.2d 360, 361 (Tenn. App. 1985).

BVT Lebanon Shopping Center, LTD v. Wal-Mart Stores, Inc., No. 01-A-01-9710-CV-00607, 1999 Tenn. App. LEXIS 267, 1999 WL 236273, at *2 (Tenn. Ct. App. Apr. 23, 1999).

Cunningham v. Cunningham, No. W2006-02685-COA-R3-CV, 2008 Tenn. App. LEXIS 364, at **11-12 (Tenn. Ct. App. June 25, 2008), *no appl. perm. appeal filed*.

We disagree with Mother's contention "that finding willful abandonment would be impossible with the explanations given along with the mental health symptoms of which she was experiencing at the time."

As pertinent to the issue of abandonment, Tenn. Code Ann. § 36-1-113(g)(1) provides:

(g) Initiation of termination of parental or guardianship rights may be based upon any of the following grounds:

(1) Abandonment by the parent or guardian, as defined in § 36-1-102, has occurred;

Tenn. Code Ann. § 36-1-113(g)(1) (2005). As pertinent to this issue, Tenn. Code Ann. § 36-1-102 provides:

(1)(A) For purposes of terminating the parental or guardian rights of parent(s) or guardian(s) of a child to that child in order to make that child available for adoption, "abandonment" means that:

(i) For a period of four (4) consecutive months immediately preceding the filing of a proceeding or pleading to terminate the parental rights of the parent(s) or guardian(s) of the child who is the subject of the petition for termination of parental rights or adoption, that the parent(s) or guardian(s) either have willfully failed to visit or have willfully failed to support or have willfully failed to make reasonable payments toward the support of the child;

(ii) The child has been removed from the home of the parent(s) or guardian(s) as the result of a petition filed in the juvenile court in which the child was found to be a dependent and neglected child, as defined in § 37-1-102, and the child was placed in the custody of the department or a licensed child-placing agency, that the juvenile court found, or the court where the termination of parental rights petition is filed finds, that the department or licensed child-placing agency made reasonable efforts to prevent removal of the child or that the circumstances of the child's situation prevented reasonable efforts from being made prior to the child's removal; and for a period of four (4) months following the removal, the department or agency has made reasonable efforts to assist the parent(s) or guardian(s) to establish a suitable home for the child, but that the parents(s) or guardian(s) have made no reasonable efforts to provide a suitable home and have demonstrated a lack of concern for the child to such a degree that it appears unlikely that they will be able to provide a suitable home for the child at an early date;

* * *

(C) For purposes of this subdivision (1), “token visitation” means that the visitation, under the circumstances of the individual case, constitutes nothing more than perfunctory visitation or visitation of such an infrequent nature or of such short duration as to merely establish minimal or insubstantial contact with the child;

* * *

(E) For purposes of this subdivision (1), “willfully failed to visit” means the willful failure, for a period of four (4) consecutive months, to visit or engage in more than token visitation;

(F) Abandonment may not be repented of by resuming visitation or support subsequent to the filing of any petition seeking to terminate parental or guardianship rights or seeking the adoption of a child;...

Tenn. Code Ann. § 36-1-102 (1) (2005).

The Juvenile Court found, and the record on appeal shows, that Mother willfully failed to exercise her scheduled visitations. Mother herself testified that the reasons she missed visitation were because she had three surgeries during the four month period and because she “wanted to act like there wasn’t a problem.” Mother, however, failed to exercise the majority of her scheduled visitations during the entire time that the Child has been in State custody, not just during the time period during which Mother asserts she had surgery. Mother had no valid reason for her failure to exercise visitation, and she admitted that she had indeed missed the majority of her scheduled visitations. On several occasions, even when DCS provided transportation for Mother so that she could attend visitations, Mother would fail to exercise her visitation by terminating the visit early. The evidence in the record on appeal does not show that her mental condition was what caused Mother to abandon the Child by missing visitations. Rather, the evidence shows, as Mother herself admitted, that she allowed herself to be lazy.

The evidence also shows, and the Juvenile Court found, that Mother had failed to provide a suitable home for the Child. Specifically, the Juvenile Court found that although Mother had made an adjustment of circumstance, the conditions had not changed to the extent that the Child would be safe and well cared for in her home; that with regard to her mental health, Mother had “failed to make an effective and lasting adjustment after reasonable efforts by the Department of Children’s Services;” and that Mother “is not really willing and able to provide for the child in a physical manner to meet his needs.”

The evidence does not preponderate against the Juvenile Court’s findings that clear and convincing evidence existed to terminate Mother’s parental rights under Tenn. Code Ann. § 36-1-113(g)(1).

Next we consider whether the Juvenile Court erred in terminating Mother’s parental rights under Tenn. Code Ann. § 36-1-113(g)(2). As pertinent to this issue, Tenn. Code Ann. § 36-1-113(g)(2) provides that parental rights may be terminated upon clear and convincing evidence that:

“There has been substantial noncompliance by the parent or guardian with the statement of responsibilities in a permanency plan or a plan of care pursuant to the provisions of title 37, chapter 2, part 4.” Tenn. Code Ann. § 36-1-113(g)(2) (2005).

The record reveals that Mother made little or no effort toward completing the tasks on the Perm Plan until after the Petition was filed. The Juvenile Court specifically found and held that although Mother did complete several of the tasks on the Perm Plan after the Petition was filed, she failed to comply with the Perm Plan before the filing of the Petition to terminate her rights. Mother’s actions in completing some of the tasks on the Perm Plan after the filing of the Petition show that she understood the tasks she was to complete under the Perm Plan. Her actions also show that she was capable of completing these tasks as she herself testified that she did complete these tasks on her own without assistance from DCS. The evidence does not preponderate against the Juvenile Court’s findings that clear and convincing evidence existed to terminate Mother’s parental rights under Tenn. Code Ann. § 36-1-113(g)(2).

Next we consider whether the Juvenile Court erred in finding and holding that it was in the Child’s best interest for Mother’s parental rights to be terminated. The evidence in the record shows overwhelmingly that the Child has no significant bond with Mother, but has bonded with his foster family. The evidence also reveals that it would be detrimental to the Child for his bond with the foster family to be disrupted. Given this, in addition to the evidence regarding the Child’s physical needs and well-being as discussed previously, we find that the evidence does not preponderate against the Juvenile Court’s findings that clear and convincing evidence existed that it was in the Child’s best interest for Mother’s parental rights to be terminated.

Finally, we consider whether the Juvenile Court erred in admitting the CASA report into evidence. As this Court stated in *Delapp v. Pratt*:

Issues regarding admission of evidence in Tennessee are reviewed for abuse of discretion. *Dickey v. McCord*, 63 S.W.3d 714, 723 (Tenn. Ct. App. 2001). “[T]rial courts are accorded a wide degree of latitude in their determination of whether to admit or exclude evidence, even if such evidence would be relevant.” *Id.* Our Supreme Court discussed the abuse of discretion standard in *Eldridge v. Eldridge*, stating:

Under the abuse of discretion standard, a trial court’s ruling “will be upheld so long as reasonable minds can disagree as to [the] propriety of the decision made.” A trial court abuses its discretion only when it “applie[s] an incorrect legal standard, or reache[s] a decision which is against logic or reasoning that cause[s] an injustice to the party complaining.” The abuse of discretion standard does not permit the appellate court to substitute its judgment for that of the trial court.

Eldridge v. Eldridge, 42 S.W.3d 82, 85 (Tenn. 2001) (citations omitted).

Appellate courts ordinarily permit discretionary decisions to stand when reasonable judicial minds can differ concerning their soundness. *Overstreet v. Shoney's, Inc.*, 4 S.W.3d 694, 709 (Tenn. Ct. App. 1999). A trial court's discretionary decision must take into account applicable law and be consistent with the facts before the court. *Id.* When reviewing a discretionary decision by the trial court, the "appellate courts should begin with the presumption that the decision is correct and should review the evidence in the light most favorable to the decision." *Id.*

Delapp v. Pratt, 152 S.W.3d 530, 538 (Tenn. Ct. App. 2004).

We, however, need not decide if it was error for the Juvenile Court to admit the CASA report. Even if it were error for the Juvenile Court to have admitted the CASA report, and we make no determination regarding whether it was or was not error, such an error would have been harmless given the other overwhelming evidence in the record. The record contains sufficient clear and convincing evidence to terminate Mother's parental rights to the Child completely without any consideration of the CASA report. Therefore, we hold that the Juvenile Court did not make any reversible error as to this issue.

As clear and convincing evidence existed to support terminating Mother's parental rights to the Child under Tenn. Code Ann. §§ 36-1-113(g)(1) and (g)(2), and clear and convincing evidence existed that it was in the Child's best interest for Mother's parental rights to be terminated, we affirm the Juvenile Court's Final Decree of Guardianship entered on March 12, 2008.

Conclusion

The judgment of the Juvenile Court terminating Mother's parental rights to the Child is affirmed, and this cause is remanded to the Juvenile Court for collection of the costs below. The costs on appeal are assessed against the Appellant, Kimberly Y. and her surety, if any.

D. MICHAEL SWINEY, JUDGE